Supreme Court of the United States

OCTOBER TERM, 1916.

No. 179.

THE IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, EDWARD J. BERWIND, and MORGAN M. DARLEY,

Plaintiffs in Error,

vs.

NEGAUNEE Iron Company, Inc., WARD V. BENEDICT and MAY KAUFMAN,

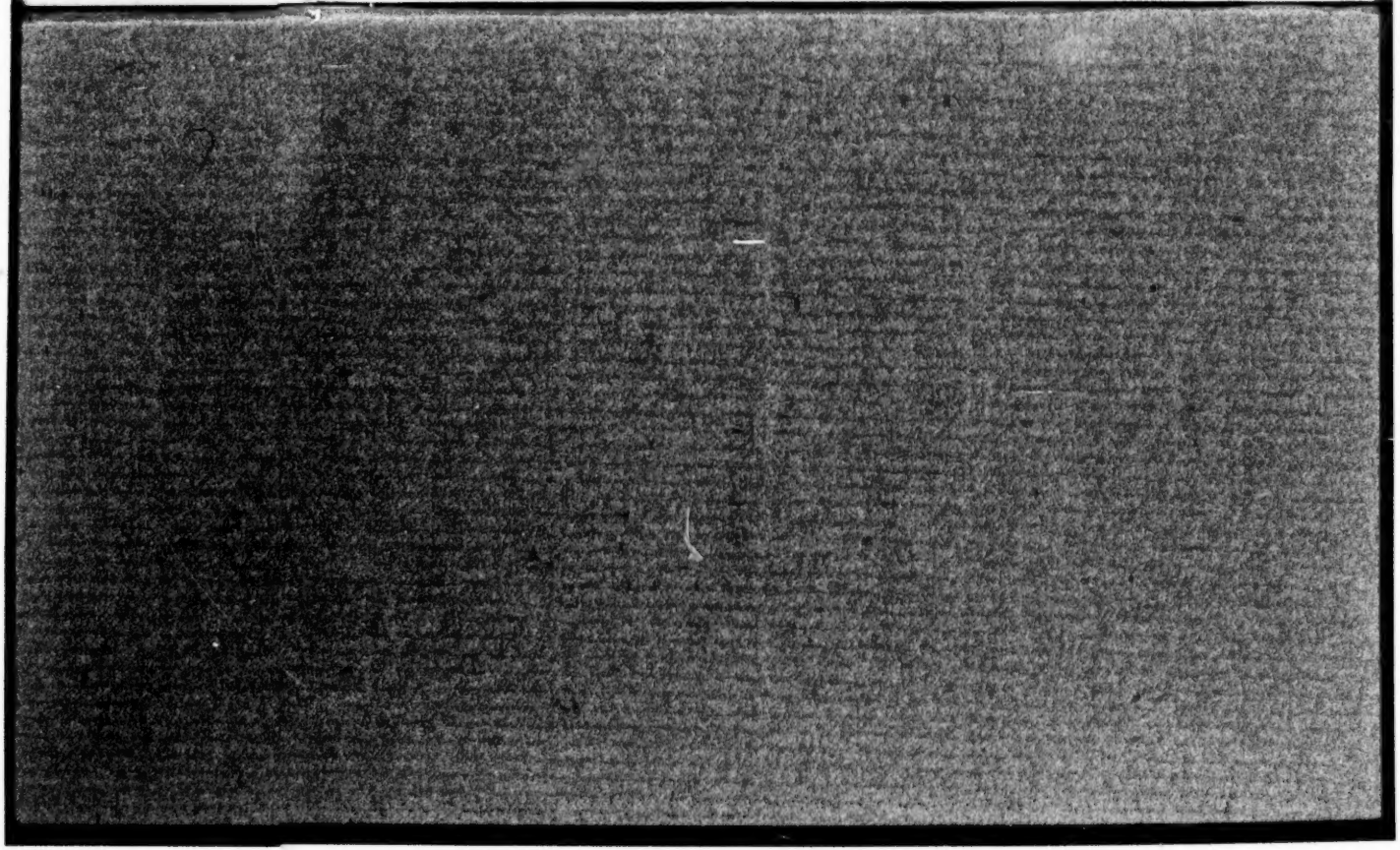
Defendants in Error.

Reply Brief of Defendants in Error Answering Certain Erroneous Statements of Fact Contained in Main Brief of Plaintiffs in Error.

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Plaintiffs in Error,
v.
THE NEGAUNEE IRON COMPANY, et al,
Defendants in Error.

Correction of Certain Erroneous Statements of Fact Contained in Main Brief of Plaintiffs in Error.

We desire to call the attention of the court to certain erroneous statements of fact contained in the plaintiffs' main brief.

I.

The following statement is made on page 5 as to the basis for the relief asked:

> "Numerous acts and defaults of the Pioneer Iron Company were set out, all of which were claimed to result in the termination of all the rights of said company under this 99-year lease; *and it was also alleged that the defendants, acting in the name of the Pioneer Iron Company, as*

stockholders, directors and agents of said company, were wrongfully asserting, in its name, its existing and continuing right to mine under said lease, and were in the act of mining and removing iron ore from said premises."

This statement is entirely misleading. The 13th paragraph of the bill alleges the expiration by limitation of the corporate existence of the Pioneer Iron Company, and its dissolution, and by such dissolution the termination of any rights which that company may have had in complainants' land, under and by virtue of the 99-year lease. The 16th and 17th paragraphs allege a fraudulent conspiracy by the defendants to defraud the complainants by mining and removing iron ore from their lands, under cover and by use of the name of the defunct Pioneer Iron Company, but for the benefit of the corporate defendants. The connection of Mather and Duncan with this conspiracy is alleged to be as officers and agents of the other defendants, and not as "stockholders, directors and agents" of the Pioneer Iron Company. It is also alleged that Duncan is the managing agent of the Iron Cliffs Company and of the Cleveland-Cliffs Iron Company, and is superintending and directing the work done on complainants' lands under the *pretense* that he is the agent of the Pioneer Iron Company.

The 19th paragraph of the bill alleges that complainants have applied to Mather and Duncan to ascertain who are the persons claimed to be officers and directors of the pretended Pioneer Iron Company, and that these defendants declined to give the names of such persons, or to furnish information by means of which their names can be obtained.

An examination of the bill will show that the acts and defaults of the Pioneer Iron Company therein set out are alleged for the purpose of explaining and

characterizing the wrongful acts of the defendants. *The very existence of the Pioneer Iron Company is by the bill denied.*

The evidence of the conspiracy and the use made by the defendants of the name of the Pioneer Iron Company was clear and convincing, and the supreme court, whose findings alone we take it this court will consider, expressly find (Record p. 569), as follows:

> "Under the allegations of the bill, *as well as under the proofs*, the Pioneer Iron Company is used as a dummy for the benefit of the defendant companies."

In like manner, the relief granted did not, as is erroneously asserted by plaintiffs in error at page 6, and frequently elsewhere in their brief, enjoin anyone as agent of the Pioneer Iron Company. It enjoined only the corporate defendants, the Iron Cliffs and Cleveland-Cliffs Iron Companies and their officers, including the individual defendants, whether acting individually or as representatives of the defendant corporations.

II.

From pages 6 to 15 an attempt is made to show from the testimony that in the organization of the Pioneer Iron Company, Harvey attempted to wrong that company, and it is claimed on page 15 that the facts admitted with reference to Harvey are such that neither he nor his grantees come with clean hands into a court of equity. This conclusion is wholly unwarranted, and is based entirely upon mis-statement and misconstruction of the testimony. On page 7 the statement is made that Harvey was, before its organization, the agent and trustee of the stockholders in Michigan.

There is no evidence whatever in the case, and nothing in the testimony of Harvey to justify the statement that he was, prior to the organization of that company, in any manner the agent of any of the parties who afterwards became its stockholders, nor does the evidence justify the statement that he undertook the task of acquiring land useful for the purposes of this corporation, and in doing this chose the method of passing title through himself while acting as the agent and trustee of the corporation.

The facts are, that on Feb. 26, 1857, Harvey purchased 4162 acres of land in Marquette county from Reynolds. There is no evidence that if Harvey, at this time, had in mind the purpose of organizing a corporation, he had interested anyone in the venture, or that he was under obligations of any kind as agent or trustee for anyone who subsequently became a stockholder in the Pioneer Iron Company. That company was not organized until April 2, 1857, and there is no evidence that Harvey bought the lands from Reynolds for its use.

The lands which he conveyed to the company were 2688 acres acquired from Reynolds, and 800 acres of other lands. This is the finding of the supreme court (Record p. 562). The inference, therefore, attempted to be drawn, that Harvey purchased from Reynolds the 4162 acres for the company, is entirely unjustified by the facts.

On page 13 the statement is made that the consideration for the 99-year lease, while apparently but one dollar, was really the twenty-five thousand dollars paid by the Pioneer Iron Company to Reynolds; that the consideration for the lease was not the amount paid Reynolds is amply shown by the evidence, but we

are content to rest the question upon the finding of the supreme court (Record p. 574):

> "The undoubted consideration for this lease was the exploration and development of iron ore upon the lands by the company, the discovery and development of which would redound to the benefit of the lessor. There must have been some consideration moving from this company to Harvey to induce him to make the lease, other than the nominal consideration expressed in it. The learned counsel for defendants attempt to show that the twenty-five thousand dollars paid for the deed was also the consideration paid for the lease. The record fails to establish any such claim. On the contrary, it conclusively appears that the standing timber upon the lands conveyed by the deed was then worth more than the twenty-five thousand dollars, the consideration expressed therein and paid."

This mis-statement as to the consideration for the lease appears many times in plaintiffs' brief, but we deem this one correction all that is necessary.

On the same page they say:

> "The Pioneer Iron Company gave direct to Reynolds its obligation for $25,000, the amount of the consideration named in the conveyance, securing the same by mortgage and afterwards paying it in full."

This is incorrect, as an examination of the record will demonstrate. The consideration for the conveyance from Reynolds to Harvey was $30,000 (Record p. 13), while the consideration of this mortgage was $20,000, to be evidenced by four promissory notes of the sum of $5,000 each and interest, viz: the first for $6,400, the second for $6,050, the third for $5,700, the fourth for $5,350; amounting in all to $23,500 (Record p. 76).

In this connection, we desire to call the attention of the court to the finding by the Supreme Court of the State of Michigan (Record p. 565):

> "Not long after its organization, the company made some explorations on the land in controversy, but discovered no ore of sufficiently good quality for use, abandoned further operations in that direction, and, during its lifetime, made no further efforts to mine ore from its lands for use in its furnace."

It thus appears that the lessor never received the only consideration there was for this lease, to-wit: the exploration of his lands.

The statement is several times made by plaintiffs in error in their main brief, that the 99-year lease covered a little over 648 acres of land, and that it was the remaining part of the land which Harvey acquired from Reynolds by the deed of Feb. 26, 1857. It is, perhaps, immaterial, but the acreage covered by the 99-year lease was 1474, and not 648 acres. (Record, plat 3, p. 54.)

III.

At page 15, the statement is made, that "it is undisputed on the evidence, that the Pioneer Iron Company entered upon its estate, cut timber and mined iron ore, and that it carried on operations to a greater or less extent from its organization until now, and is still actively engaged in the manufacture of pig iron within the limits of Marquette County, as they existed at the time Reynolds gave his deed." It is a fact that the Pioneer Iron Company cut the timber on the land described in the 99-year instrument within the five years limited for such cutting, and that it explored for iron ore on these lands in the late fifties, and possibly in 1860 or 1861. (Record p. 488). The supreme court found that "not long after its organization, the company made some explorations on the land in controversy,

> but discovering no ore of sufficiently good quality for use, abandoned further operations in that direction, and, during its lifetime, made no further efforts to mine iron ore from its own land for use in its furnaces. The company became financially embarrassed in 1866, leased its own plant and all its lands and property, including the 99-year lease, to the Iron Cliffs Company, a corporation organized under the laws of this state. Shortly after the lease to the Iron Cliffs Company, that company acquired the entire capital stock of the Pioneer Iron Company, and continued to own it until after Oct. 18, 1889." * * * "From 1866 to 1890, the Iron Cliffs Company operated the furnace. Afterwards it was operated by the Cleveland-Cliffs Iron Company, a corporation organized under the laws of West Virginia, until 1894, when that company dismantled the furnace and has never rebuilt it. (Record p. 565).

At page 569, the supreme court find that "the defendants own, and have owned for many years, all its capital stock, its furnaces and property, both real and personal; they have managed all its affairs, and for their own benefit; all its accounts, if any have been kept in the name of the Pioneer Iron Company, have been kept upon the books of the defendants."

The testimony of Duncan, one of the plaintiffs in error, shows that the only books of the Pioneer Iron Company kept in the County of Marquette go back only as far as the commencement of the trespasses on the lands in controversy in December, 1899 (Record p. 101). No books of the Pioneer Iron Company were kept in the general offices of the defendant corporations in Cleveland before that time (Record p. 432). Gibbs, who was at one time general manager, and in the employ of the Iron Cliffs Company from 1873 to 1894, testifies that the Pioneer Iron Company kept no books, paid no men, drew no checks, and paid no sal-

aries during all the years he was connected with the company (Record pp. 494-503).

The Pioneer Iron Company is stated, in its Articles of Association, to be formed "for the purpose of procuring a suitable location for a manufactory, and lands to furnish coaling facilities therefor, in the upper peninsula of the State of Michigan, and working the same for the production of merchantable iron, and such other use of their lands as the company may hereafter determine and adopt."

It is, therefore, shown beyond controversy that the Pioneer Iron Company did not continue in active and extensive business before and after the year 1889 and up to the present time. The only business shown by the record cited on pages 19 and 20 of their brief, is conveyancing or leasing in the disposal of its lands, except that, Jan. 3, 1900, after the commencement of the trespasses on the lands of defendants in error, there is a record of the purchase of the Carp River furnace at Marquette. The testimony is conclusive, that until the defendants originated the fraudulent scheme which resulted in this litigation, the Pioneer Iron Company had done no business of any kind in connection with the mining of ore or the manufacture of iron since 1866.

IV.

On page 19, the statement is made, that under the law allowing the reorganization of corporations, the Pioneer Iron Company took the necessary steps and proceedings, and duly reorganized said corporation, thereby extending its charter for another period of thirty years from April 2, 1887. This statement, in substance, is repeated on page 27 and many times elsewhere.

The question of the validity of the reorganization of the Pioneer Iron Company, and the steps taken for that purpose, are sufficiently discussed in our main brief, commencing at page 63; but that the question was at issue and disputed in the case is sufficiently shown by the opinion of the supreme court at page 576, where the court says:

> "Very important questions are raised by counsel as to the effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in a position to avail itself of this statute, and also, the effect upon the 99-year lease, should the reorganization be held to be valid."

V.

On page 20, the statement is made that the Pioneer Iron Company as reorganized has continued to assert its right in the 99-year lease.

There is no justification for this statement in the record. On the contrary the supreme court found that the defendants in error, beginning about 1870, explored each forty-acre tract covered by the 99-year lease, and found ore upon each tract upon which plaintiffs in error have entered, and mined ore therefrom, amounting to at least three million tons, and expended money thereon amounting to at least seven hundred thousand dollars. These explorations were carried on openly and notoriously for more than twenty years (Record p. 565).

In this connection, also, the supreme court says (Record p. 575): "during all of which time the Pioneer Iron Company stood by in silence asserting no right under its lease;" and again (Record p. 575), "soon after the execution of the 99-year lease, the Pioneer Iron Company made some explora-

> tions on certain portions of the land covered thereby, found ore, but not in paying quantities, abandoned the explorations, and for full forty-three years made no other attempt to avail itself of this mining right."

At page 42, it is asserted that "the decree complained of directly and in terms declares the 99-year lease no longer exists as the property of the Pioneer Iron Company, and its officers are thereby enjoined perpetually from asserting its right therein."

We have already shown that the decree, neither in terms nor by implication, affects the property of the Pioneer Iron Company, and that its officers are not enjoined from asserting its rights therein. The fact that the defendants, Mather and Duncan, disclaimed that they were acting for the defendant corporations was not conclusive upon the court. The question of their relation to the alleged trespass was in issue, and the supreme court found that they, as officers and agents of the defendant corporations, and **not as officers and agents of the Pioneer Iron Company,** were engaged in trespassing upon the lands of the defendants in error (Record p. 569).

The statement is made on page 43 of plaintiffs' brief that ten shares of stock of the Pioneer Iron Company was owned by Mather personally, and there was in his name as trustee for the Iron Cliffs Company 3930 shares of said stock. This statement is not borne out by the record, but the facts in connection with it are sufficiently discussed in defendants in error's original brief on the motion to dismiss (See pp. 11-40).

In view of the arguments of the plaintiffs in error in their main brief, based on the idea that the 99-year instrument was a "valuable existing leasehold," it is desired that this court bear in mind that

> "the 99-year lease conveyed to the Pioneer Iron

> Company only an indivisible, incorporeal and personal right to mine ore, and then only for such as it should actually convert into merchantable iron in its own furnaces and forges" (Record p. 573),

consisting of one furnace with two stacks, and was appurtenant thereto (Record p. 574), and ended with the abandonment and destruction of the furnace in 1894 (Record p. 575).

The law of the case, we apprehend, has been sufficiently discussed in our briefs heretofore filed herein.

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